IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 11TH DECEMBER 2006 / 20TH AGRAHAYANA 1928

MFA. No. 1133 of 2001(C)
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OPMV.249/1997 of MOTOR ACCIDENT CLAIMS TRIBUNAL, ALAPPUZHA
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APPELLANT: SECOND RESPONDENT
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NATIONAL INSURANCE COMPANY LIMITED,
REPRESENTED BY ITS DEPUTY MANAGER,
KOCHI REGIONAL OFFICE, T.P. CELL, M.G.ROAD,
ERNAKULAM

BY ADV. SRI.P.R.RAMACHANDRA MENON

RESPONDENTS:PETITIONERS 1 TO 3 & FIRST RESPONDENT
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1. SYAMALA W/o LATE PARAMESWARAN PILLAI, ANAKKEEZHAM HOUSE, THAKAZHI PANCHAYATH, WARD NO V, THAKAZHI VILLAGE, KUTTANAD TALUK
2. SALINI, D/o LATE PARAMESWARAN PILLAI, AGED 18 YEARS, ANAKKEEZHAM HOUSE, THAKAZHI PANCHAYATH, WARD NO V, THAKAZHI VILLAGE, KUTTANAD TALUK
3. SARATHKUMAR S/o LATE PARAMESWARAN PILLAI, MINOR, AGED 15 YEARS, REPRESENTED BY HIS MOTHER AND GUARDIAN SYAMALA, ANAKKEEZHAM HOUSE THAKAZHI PANCHAYATH, WARD NO V, THAKAZHI VILLAGE KUTTANAD TALUK
4. K.KRISHNAN NAIR, S/o NARAYANAN NAIR, CHIRAYIL VEEDU, THAKAZHI PANCHAYAT, WARD NO V THAKAZHI VILLAGE, KUTTANAD TALUK

R1 TO R3 BY ADV. SRI.S.SANAL KUMAR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 11/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.S. RADHAKRISHNAN & M.N. KRISHNAN, JJ.

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M. F. A. No 1133 of 2001

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Dated: 11th December, 2006

JUDGMENT

Krishnan, J.

This appeal is preferred against the award of the Claims Tribunal, Alappuzha in O.P. (M.V) No 249 of 1997. Claimants are the widow and children of deceased Parameswaran Pillai, who died in a road accident. It is the case of the claimants that the deceased was driving an autorickshaw bearing number KL-4/A-3948 along the Thakazhi hospital - Padaharam road. According to them, when the deceased reached the place of accident another autorickshaw bearing registration number KL-4/A-4711 driven by the first respondent came in a rash and negligent manner and hit at his autorickshaw as a result of which autorickshaw driven by the deceased fell into the thodu and on account of that deceased died. The Tribunal on a consideration of the entire materials found that the accident took place on account of the negligence of the first respondent and awarded compensation of Rs 3,06,800/- to the

claimants. It is against that award, Insurance Company has come up in in appeal.

2. Learned counsel for the Insurance Company would submit that the finding of the Tribunal that the vehicle insured by the Company was involved in the accident is incorrect and the L.Rs of the deceased foisted a false case against the Insurance Company for the purpose of claiming compensation. He also made available certain records including copy of F.I statement of the witness. It is strongly contended that he was a relative of the deceased and who is also an advocate of Alappuzha bar who immediately after the accident has given statement to the effect that an accident has taken place. From a perusal of the same it is seen that he had only stated that he does not know how the accident had taken place. According to him, on enquiry it was revealed that the autorickshaw had fallen into water and that had caused the death of the person. It is also contended that a case was registered after three months from the date of the accident. It has to be stated that the police after recording the statements of the parties and after conducting due investigation had filed the charge sheet against the driver of the vehicle, the first respondent. So it cannot be said that the police has

foisted a false case against the first respondent to help the claimants. Tribunal has pointed out that the two witnesses cited namely P.Ws 2 and 3 are eye witnesses and they deposed that the accident has taken place on account of the negligence of the first respondent. Insurance company has not produced any documents or oral evidence in support of its contention to show it otherwise. Statement of Syamalakumar who immediately came after the accident would not show that nobody is responsible for the accident whereas police after conducting investigation found it otherwise and held that first respondent is responsible for the accident. P.Ws 2 and 3 stated that they had seen the accident and that has been accepted by the Tribunal. Though insurance company was able to create some suspicion in the mind of the Tribunal that would not absolve it from the liability. No contra evidence or materials were made available to show that the accident had taken place not on account of the negligence of the first respondent and we therefore uphold the finding of the Tribunal. Admittedly deceased was autorickshaw driver by profession. He was aged 45 at the time of the accident. His income was taken as Rs 2,400/- and 14 was taken as the multiplier which is fair and reasonable. So far as compensation

under other heads is concerned, we find it just and reasonable. Therefore there is no question of interfering with the award of compensation. Considering the interest rate prevalent at that time, we feel that the rate of interest granted by the Tribunal is on the higher side. We therefore reduce the rate of interest from 12% to 9% in this case. M.F.A is partly allowed. The finding of the Tribunal on the question of negligence is confirmed and the rate of interest is reduced from 12% to 9%. Appeal is disposed of as above.

Sd/-

(K.S. RADHAKRISHNAN, JUDGE)

Sd/-

(M.N. KRISHNAN, JUDGE)

11/12/2003

en/

Order on CMP 7930/2001 - Dismissed.

Id./- K.S.Radhakrishnan, Judge

Id./- M.N.Krishnan, Judge

11/12/206

[true copy]